EXHIBIT
A

IN THE COURT OF COMMON PLEAS OF

FAYETTE COUNTY, PENNSYLVANIA

LORI L. WILSON, DONALD STIMMEL and DELORES STIMMEL, his wife, and RUTH BEAL, on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

MENU FOODS LIMITED, a foreign corporation,

Defendant.

RECEIVED AUG 23 2007

CIVIL DIVISION

NO. 1098 OF 2007, G.D.

PLAINTIFFS' FIRST AMENDED COMPLAINT

JUDGE JOHN F. WAGNER, JR.

JURY TRIAL DEMANDED

Filed on behalf of:

Plaintiffs and others similarly situated

Counsel of record for this party:

James T. Davis, Esquire
Attorney ID # 23527
DAVIS & DAVIS
107 East Main Street
Post Office Box 1163
Uniontown, PA 15401

(724) 437-2799

FILED 2007 AUG 21 A 11:51

D0021263.1

Dockets.Justia.com

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA
CIVIL DIVISION

LORI L. WILSON, DONALD STIMMEL and DELORES STIMMEL, his wife, and RUTH BEAL, on behalf of themselves and all others similarly situated,	:
Plaintiffs,	:
vs.	:
	: NO. 1098 OF 2007, G.D.
MENU FOODS LIMITED, a foreign corporation,	: JUDGE JOHN F. WAGNER, JR.
Defendant.	: **JURY TRIAL DEMANDED**

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

PENNSYLVANIA LAWYER REFERRAL SERVICE
PENNSYLVANIA BAR ASSOCIATION
100 South Street, P. O. Box 186
Harrisburg, PA 17108
TELEPHONE: 1/800-692-7375

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA
CIVIL DIVISION

LORI L. WILSON, DONALD STIMMEL and DELORES STIMMEL, his wife, and RUTH BEAL, on behalf of themselves and all others similarly situated,	:	
Plaintiffs,	:	
vs.	:	
	:	NO. 1098 OF 2007, G.D.
MENU FOODS LIMITED, a foreign corporation,	:	JUDGE JOHN F. WAGNER, JR.
Defendant.	:	**JURY TRIAL DEMANDED**

PLAINTIFFS' FIRST AMENDED COMPLAINT

AND NOW, come the Plaintiffs, Lori L. Wilson, Donald Stimmel and Dolores Stimmel, his wife, and Ruth Beal, and others similarly situated, by and through their undersigned attorney, James T. Davis, Esquire, of Davis & Davis, bringing this amended class action for damages on behalf of themselves and all others similarly situated and against the above-named Defendant and complain and allege as follows:

1. Plaintiff, Lori L. Wilson ("Wilson"), is an adult individual who resides at 185 Amend Road, Uniontown, Pennsylvania 15401.

2. Plaintiffs, Donald Stimmel and Delores Stimmel, his wife ("Stimmels"), are adult individuals who reside at 3346 National Pike, Farmington, Pennsylvania 15437.

3. Plaintiff, Ruth Beal ("Beal"), is an adult individual who resides at 139 Dunbar Road, Dunbar, Pennsylvania 15431.

4. Defendant, Menu Foods Limited (Menu Foods), is, upon information and belief, a corporation organized under the laws of Canada, with a principal place of business at 8 Falconer Drive, Mississuaga/Streetsville, Ontario, Canada L5N, 1BS, that transacts business in the State of Pennsylvania.

5. The Defendant is a producer of, *inter alia,* dog and cat food. Menu Foods produces dog and cat food sold under familiar brand names such as Special Kitty wet cat food, Iams, Eukanuba and Science Diet. Menu Foods distributes its dog and cat food throughout the United States to retailers such as Wal-Mart, Kroger and Safeway.

6. Dog and cat food produced by the Defendant caused an unknown number of dogs and cats to become ill, and many of them to die, which involves the Plaintiffs' domestic animals as well as those others similarly situated.

7. To date, Menu Foods has recalled 50 brands of dog food and 40 brands of cat food, including the Special Kitty brand, that have sickened and killed dogs and cats. All recalled food to date is of the "cuts and gravy" wet style.

8. The Plaintiff, Lori L. Wilson, is the owner of an eight month old female cat named "Faith."

9. The Plaintiff purchased Special Kitty wet cat food manufactured, produced and offered for sale to the general public by the Defendant from Wal-Mart for Faith to consume.

10. Faith ate the Special Kitty brand wet style cat food for several months before she was beset with her current illness.

11. Faith became extremely ill during the week of March 12 and 13, 2007, by vomiting and laying listless around Plaintiff's home.

12. On March 17, 2007, the Plaintiff took Faith to a veterinarian, who performed blood work on Faith.

13. On March 18, 2007, the veterinarian informed the Plaintiff that Faith had suffered kidney failure, also known as acute renal failure. The veterinarian immediately treated Faith with IVs, vitamins and antibiotics.

14. From March 19, 2007 through the present date, the Plaintiff has administered to Faith at-home IVs, vitamins and antibiotics.

15. On March 24, 2007, the Plaintiff took Faith back to the veterinarian for more IV treatment and blood work.

16. Faith's condition has not dramatically improved at this date and the Plaintiff is due to return Faith to the veterinarian for more testing for renal failure at the end of April 2007.

17. The Stimmels were the owners of two dogs, Cosmo and Bino, who died as a result of consuming the Defendant's tainted food.

18. Beal is the owner of a dog, Speedy, who became ill after consuming the Defendant's tainted food.

19. As a result of the Defendant's malicious and wanton actions, the Plaintiffs have suffered emotional and economic damages.

COUNT I

LORI L. WILSON, DONALD STIMMEL and DELORES STIMMEL, his wife, and RUTH BEAL, on behalf of themselves and all others similarly situated vs. MENU FOODS LIMITED

BREACH OF CONTRACT

20. The Plaintiffs reallege all prior allegations as though fully stated herein.

21. The Plaintiffs purchased said cat and dog food produced by the Defendant based on the understanding that the food was safe for their pets to consume.

22. The pet food produced by the Defendant was not safe for pets to consume and caused dogs and cats to become ill and die, particularly those of the Plaintiffs and others similarly situated.

23. The unsafe nature of the pet food constituted a breach of contract.

24. As a result of said breach, the Plaintiffs and others similarly situated have suffered damages that may fairly and reasonably be considered as arising naturally from the breach or may reasonably be supposed to have been in the contemplation of the parties at the time they made the contract, as the probable result of the breach of it.

25. The Plaintiffs and others similarly situated have also incurred, are incurring and in the future will incur veterinarian expenses for the treatment of their pets' injuries and deaths sustained as a direct result of the consumption of the Defendant's tainted pet food.

WHEREFORE, the Plaintiffs and all others similarly situated demand judgment against the Defendant, Menu Foods Limited, in an amount in excess of $50,000, plus costs of suit.

COUNT II

LORI L. WILSON, DONALD STIMMEL and DELORES STIMMEL, his wife, and RUTH BEAL, on behalf of themselves and all others similarly situated vs. MENU FOODS LIMITED

UNJUST ENRICHMENT

26. The Plaintiffs reallege all prior allegations as though fully stated herein.

27. The Defendant was and continues to be unjustly enriched at the expense of the Plaintiffs and others similarly situated by accepting payment for the tainted pet food knowing that the cat food and dog food was not fit for the consumption of pets owned by Plaintiffs and others similarly situated.

28. The Defendant should be required to disgorge this unjust enrichment of the monies paid by the Plaintiffs and others similarly situated for the purchase of the tainted cat and dog food.

WHEREFORE, The Plaintiffs and all others similarly situated demand judgment against the Defendant, Menu Foods Limited, in an amount in excess of $50,000, plus costs of suit.

COUNT III

LORI L. WILSON, DONALD STIMMEL and DELORES STIMMEL, his wife, and RUTH BEAL, on behalf of themselves and all others similarly situated vs. MENU FOODS LIMITED

UNLAWFUL, DECEPTIVE AND UNFAIR TRADE PRACTICES

29. The Plaintiffs reallege all prior allegations as though fully stated herein.

30. The Defendant's sale of tainted pet food constitutes an unlawful, deceptive and unfair business act within the meaning of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 Pa.C.S. §§ 201-1 et seq.

31. The Defendant's sale of hazardous pet food had the capacity to deceive a substantial portion of the public and to affect the public interest.

32. As a result of the Defendant's unfair and/or deceptive acts or practices, the Plaintiffs and others similarly situated have suffered injuries.

33. The Defendant fraudulently represented that the cat and dog food offered for sale and purchased by the Plaintiffs and others similarly situated for their pets was not tainted and fit for their consumption.

34. The Defendant never informed the Plaintiffs or others similarly situated about the tainted and poisoned cat and dog food.

35. The Defendant and its representatives made representations and omissions about the fitness of the cat and dog food for purchase and consumption of cats and dogs, particularly those of the Plaintiffs and others similarly situated, in order to induce the Plaintiffs and others similarly situated to purchase same.

36. The Plaintiffs and others similarly situated did in fact justifiably rely on the Defendant's material representations and omissions and was induced thereby to purchase said cat and dog food.

37. These representations and omissions made by the Defendant constitute unfair methods of competition and unfair or deceptive acts or practices within the meaning of Section 201-2(4)(ii), (vi), (xvii), and (xvii) of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 Pa.C.S. §§ 201-1 et seq.

38. As a direct and proximate result of the Defendant's material representations and omissions, the Plaintiffs and others similarly situated have sustained damages which include, but is

not limited to, past, present and future veterinarian expenses for the treatment of their pets' injuries and deaths sustained as a direct result of the consumption of the Defendant's tainted pet food.

WHEREFORE, the Plaintiffs and all others similarly situated demand judgment against the Defendant, Menu Foods Limited, and in Plaintiffs' favor awarding them treble damages under the Pennsylvania Unfair Trade Practice and Consumer Protection Law, interest, costs and attorney fees, and such other relief as the Court may determine appropriate.

COUNT IV

LORI L. WILSON, DONALD STIMMEL and DELORES STIMMEL, his wife and RUTH BEAL, on behalf of themselves and all others similarly situated vs. MENU FOODS LIMITED

BREACH OF WARRANTIES

39. The Plaintiffs reallege all prior allegations as though fully stated herein.

40. Cat food and dog food produced by Menu Foods are "goods" within the meaning of the Uniform Commercial Code Article 2.

41. Defendant's conduct as described herein constitutes a breach of an implied or express warranty of affirmation.

42. Defendant's conduct as described herein constitutes a breach of an implied warranty of merchantability.

43. Defendant's conduct as described herein constitutes a breach of an implied warranty of fitness for a particular purpose.

44. As a proximate result of the aforementioned wrongful conduct and breaches, the Plaintiffs and others similarly situated have suffered damages.

45. The Defendant has had actual or constructive notice of such damages.

WHEREFORE, the Plaintiffs and all others similarly situated demand judgment against the Defendant, Menu Foods Limited, in an amount in excess of $50,000, plus costs of suit.

COUNT V

LORI L. WILSON, DONALD STIMMEL and DELORES STIMMEL, his wife, and RUTH BEAL, on behalf of themselves and all others similarly situated vs. MENU FOODS LIMITED

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

46. The Plaintiffs reallege all prior allegations as though fully stated herein.

47. The Defendant knew, but did not tell the Plaintiffs and all others similarly situated, that the cat and dog food was contaminated, polluted and unfit for consumption by cats and dogs owned by the Plaintiffs and others similarly situated.

48. The Plaintiffs and all others similarly situated bought the tainted cat food and dog food for their pets and fed their pets said food, not suspecting that the Defendant's cat food and dog food would cause their pets to fall seriously ill with kidney failure as a result of eating same and die.

49. The Plaintiffs and all others similarly situated, since feeding their pets the tainted cat and dog food, have had to endure taking their pets to the veterinarian and helplessly witness their pets receive numerous medical treatments aimed at stabilizing their poisoned system which in many cases has caused their untimely deaths by the Defendant's contaminated cat and dog food.

50. The Defendant acted with the malicious intention of causing pets owned by the Plaintiffs and all others similarly situated to become ill and die by consuming its tainted and poisoned cat and dog food.

51. The Defendant intended its actions to cause Plaintiffs and all others similarly situated to suffer extreme emotional distress.

52. As a result of Defendant's conduct, the Plaintiffs and all others similarly situated have suffered from mental anguish, nervous shock, embarrassment, shame and humiliation and may be required to undergo extensive medical treatment in order to overcome the emotional distress which they have suffered.

WHEREFORE, the Plaintiffs and all others similarly situated demand judgment against the Defendant, Menu Foods Limited, in an amount in excess of $50,000, for compensatory and punitive damages, plus interest and costs of suit.

COUNT VI

LORI L. WILSON, DONALD STIMMEL and DELORES STIMMEL, his wife, and RUTH BEAL, on behalf of themselves and all others similarly situated vs. MENU FOODS LIMITED

Class Allegations In Support of Prerequisites Of Pa. R. C. P. 1702 Upon Which Plaintiffs Rely and the Criteria Under Pa. R. C. P. 1708 - 1709 Upon Which Plaintiffs Rely

53. The Plaintiffs reallege all prior allegations as though fully stated herein.

54. The within action is being amended to be filed as a class action because:

(a) The class is so numerous that joinder of all members is impracticable ;

(b) There are questions of law or fact common to the class;

(c) The claims or defenses of the representative parties are typical of the claims or defenses of the class;

(d) The representative parties will fairly and adequately assert and protect the interests of the class under the criteria set forth in Rule 1709; and

(e) A class action provides a fair and efficient method for adjudication of the controversy under the criteria set forth in Rule 1708.

WHEREFORE, Plaintiffs and all others similarly situated respectfully request that this Court enter judgment against the Defendant in their favor and in favor of all other party Plaintiffs, in an amount equal to their collective actual and compensatory damages, together with costs, treble damages and reasonable attorney fees.

JURY TRIAL DEMANDED.

Respectfully submitted,

DAVIS & DAVIS

James T. Davis, Esquire
Attorney for Plaintiffs and all others similarly situated

Date: August 21, 2007

VERIFICATION

I, LORI L. WILSON, on behalf of herself and all others similarly situated, verify that the statements made in this foregoing PLAINTIFFS' FIRST AMENDED COMPLAINT are true and correct to the best of my knowledge, information and belief. I understand that statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsifications to authorities.

Lori L. Wilson

Lori L. Wilson

Date: August 21, 2007

VERIFICATION

We, DONALD STIMMEL and DELORES STIMMEL, his wife, on behalf of themselves and all others similarly situated, verify that the statements made in this foregoing PLAINTIFFS' FIRST AMENDED COMPLAINT are true and correct to the best of our knowledge, information and belief. We understand that statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsifications to authorities.

Donald K. Stimmel
Donald Stimmel

Delores Stimmel
Delores Stimmel

Date: August 21, 2007

VERIFICATION

I, RUTH BEAL, on behalf of herself and all others similarly situated, verify that the statements made in this foregoing PLAINTIFFS' FIRST AMENDED COMPLAINT are true and correct to the best of my knowledge, information and belief. I understand that statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsifications to authorities.

Ruth Beal

Ruth Beal

Date: August 21, 2007

CERTIFICATE OF SERVICE

I herein certify that a copy of the within PLAINTIFFS' FIRST AMENDED COMPLAINT has been served on the following counsel of record this 21 day of August, 2007, by prepaid first-class United States mail:

Lynn E. Bell, Esquire
DAVIES, McFARLAND & CARROLL, P.C.
Attorneys At Law
The Tenth Floor, One Gateway Center
Pittsburgh, Pennsylvania 15222-1416
(412)-281-0737

Respectfully submitted,

DAVIS & DAVIS

James T. Davis, Esquire
Attorney for Plaintiffs and all others similarly situated

Date: August 21, 2007